

Mobile Home Estates, Inc. and International Union, Allied Industrial Workers of America, AFL-CIO, and its Local 712. Cases 8-CA-17640, 8-CA-18405, 8-CA-19660, 8-CA-19662, 8-CA-19663, 8-CA-19778, and 8-CA-19779

May 10, 1991

SUPPLEMENTAL DECISION AND ORDER REMANDING

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND OVIATT

On January 26, 1989, the National Labor Relations Board issued a Decision and Order in this proceeding,¹ directing Mobile Home Estates, Inc., the Respondent, *inter alia*, to make whole Alan C. Lupien for any loss of pay and other benefits resulting from its unfair labor practices. The United States Court of Appeals for the Sixth Circuit enforced the Board's Order on October 10, 1990.² On February 1, 1991, the Regional Director for Region 1 issued an amended compliance specification and notice of hearing, alleging that a controversy had arisen over the amount of backpay and medical payments due under the terms of the Board's Order. Subsequently, the Respondent filed an answer to the amended compliance specification denying in part and claiming lack of knowledge in part to the allegations.

On March 25, 1991, the General Counsel filed with the Board in Washington, D.C., a motion to strike Respondent's answer in part and for partial summary judgment and a brief in support. The General Counsel submits that the Respondent's answer to the amended compliance specification does not conform to the requirements of the Board's Rules and Regulations relating to the discriminatee's backpay period and the method of calculating gross backpay. The General Counsel thus submits that all allegations of the specification should be found to be true with the exception of the amount of interim earnings and medical expenses of the discriminatee.

On March 29, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's motion should not be granted. The Respondent filed a response April 15, 1991.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record, the Board makes the following

Ruling on Motion for Partial Summary Judgment

Section 102.56(b) and (c) of the National Labor Relations Board's Rules and Regulations states, in pertinent part:

(b) . . . As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) . . . If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

In its answer to the amended compliance specification, the Respondent disputes the gross backpay calculation. The Respondent claims that the calculation of gross weekly earnings set forth in the compliance section "does not accurately depict the adverse impact the discriminatee's deficient attendance record would have had on the discriminatee's gross earnings had he been continually employed by the Respondent during the backpay period." In its response to the Notice to Show Cause, the Respondent maintains that it has satisfied the requirements of the Board's Rules by stating that the discriminatee's absenteeism record is not reflected in the gross backpay calculation and that the General Counsel has comprehensive information pertaining to the attendance record in his possession. Section 102.56(b) makes clear, however, that both the basis of the disagreement and supporting figures must be supplied in an answer to a compliance specification. In the instant case, the Respondent has not furnished in its answer appropriate supporting figures.³

As the Respondent has not complied with Section 102.56(b) of the Board's Rules and Regulations by not providing appropriate supporting figures, we grant the General Counsel's motion to strike the Respondent's answer in part and for partial summary judgment. In accordance with the rules set forth above, all allegations of the backpay specification, except as to amounts of interim earnings and medical expenses, are deemed to be true.

³The Respondent's additional claim that par. 2(b) of the amended compliance specification was deficient because it allegedly sets forth gross "weekly" earnings, but actually sets forth quarterly earnings is specious. Par. 2(b) clearly presents gross weekly earnings, "on a quarterly basis." (Emphasis added.)

¹ 292 NLRB 691.

² No. 89-5265 (unpublished).

ORDER

IT IS ORDERED that the General Counsel's motion to strike the Respondent's answer to the amended compliance specification is granted with respect to paragraphs 1, 2(A), 2(B), 3, 4, 5, 8, and 9.

IT IS FURTHER ORDERED that the General Counsel's Motion for Partial Summary Judgment is granted with respect to the calculation of the discriminatee's gross backpay.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 8 for the

purpose of issuing a notice of hearing and scheduling a hearing before an administrative law judge for the purpose of taking evidence as to the alleged interim earnings and medical expenses of Alan C. Lupien. The judge shall prepare and serve on the parties a decision containing findings of fact, conclusions of law, and recommendations based on all the record evidence. Following service of the judge's decision on the parties, the provisions of Section 102.46 of the Board's Rules and Regulations shall be applicable.